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Counsel for Plaintiff

UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF NEW YORK

EDUCATIONAL IMPACT, INC.

270 Pennbrook Parkway

Lansdale, PA 19446

Plaintiff

v.

NEW YORK CITY DEPARTMENT
OF EDUCATION

Tweed Courthouse

52 Chambers Street

New York, NY 10007

Defendant.

Civil Action

Case No.:

COMPLAINT

COMPLAINT

Plaintiff Educational Impact, Inc., by and through its undersigned counsel, Alan L. Frank, Esq. and the law firm of Alan L. Frank Law Associates, P.C., brings this claim against Defendant New York City Department of Education, and in support thereof, respectfully sets forth as follows:

PARTIES

1. Plaintiff Educational Impact, Inc. ("Educational Impact") is a Pennsylvania corporation with a principal place of business at 270 Pennbrook Parkway, Lansdale, PA 19446.

2. Defendant New York City Department of Education is a department of the City of New York.

JURISDICTION AND VENUE

3. This Court has subject matter jurisdiction under 28 U.S.C. § 1331 because the Plaintiff's claims arise under 17 U.S.C. § 501 et seq.

4. Venue is proper under 28 U.S.C. § 1391(b)(1) because the only Defendant resides in this district and 28 U.S.C. § 1391(b)(2) because a substantial part of the events or omissions giving rise to this claim occurred in this district.

FACTS

5. This is a copyright infringement case.

6. Educational Impact is in the business of developing, creating, marketing, and selling online professional development programs and services that include programs and services specifically for teacher evaluation and training. These programs and services are sold to teachers, administrators, paraprofessionals, K-12 schools, educational service centers, universities, state, federal, and international departments of education, and other organizations involved in training teachers and administrators.

7. The protected interests at issue in this case are the Charlotte Danielson "Framework for Teaching" and Educational Impact's exclusive right to make certain derivative works thereof.

8. Non-party Charlotte Danielson is an individual who works in teacher and administrator training and professional development. Since the early nineties, Charlotte Danielson has worked almost exclusively in the field of teacher and administrator training, teacher evaluation, and teacher and administrator professional development.

9. In 1996, Charlotte Danielson authored a book “Enhancing Professional Practice - A Framework for Teaching” that was published by the Association for Supervision and Curriculum Development. The content of the book included a rubric commonly referred to as the “Framework for Teaching.” The rubric was designed to define good teaching and provide a system for teacher evaluation.

10. Charlotte Danielson published subsequent iterations of the Framework for Teaching in 2007, 2011, and 2013.

11. Charlotte Danielson created the 2011 Framework for Teaching specifically for Educational Impact’s use in an online teacher training program.

12. Although the 2011 and 2013 iterations of the Framework for Teaching are nominally different works, the 2011 and 2013 iterations are in fact substantially the same work. The only differences between the two are minor changes to the text of the Framework for Teaching. Said works have been registered with the Copyright Office at registration number TXu001820353.

13. Educational Impact entered into an Agreement with Charlotte Danielson and her company, Outcomes Associates, Inc. (“OA”) on September 30, 2006. (A copy of the Agreement is attached hereto as “Exhibit A.”)

14. That Agreement licenses to Educational Impact the exclusive right to create an online teacher training program based on the Framework for Teaching; prohibits Charlotte Danielson and OA from licensing to third parties the right to create a competing program based on the Framework for Teaching; and prohibits Charlotte Danielson and OA from creating a competing program based on the Framework for Teaching.

15. The Agreement states in relevant part:

Exclusivity; Non-Competition

OA shall not license or otherwise make available to a third party, for delivery over the Internet or through CD-ROM, any of the content used to create the online program. This prohibition shall include any OA content that, if used to create a similar online program, would compete with the Online Training Program contemplated herein. OA shall have the absolute right to use the content for his own benefit and continue to market and deliver the content via a format other than over the Internet or CD-ROM. Nothing in this section limits or shall be construed to limit OA's right to engage in any other activity on the Internet except as expressly set forth in this section.

Each party agrees it will not employ or offer employment to, or make any other sales, service or consulting arrangement with any individual employed by the other during the term of the agreement. This restriction shall survive the completion of the online program and extend for a period of two years after said completion.

(Ex. B.)

16. Educational Impact is therefore the exclusive licensee of the right to create a derivative work of the Framework for Teaching in the form of an online or CD-ROM-based teacher training program.

17. Non-party Teachscape, Inc. has created an online teacher training program based on the Charlotte Danielson Framework for Teaching. Teachscape, Inc.'s online teacher training program infringes on Educational Impact's exclusive rights set forth above.

18. Teachscape, Inc.'s online teacher training program is the subject of a litigation between Educational Impact, Teachscape, Inc., Charlotte Danielson, Outcomes Associates, Inc., and The Danielson Group LLC (an entity through which Charlotte Danielson offers training based on the Framework for Teaching), currently pending in the United States District Court for the District of New Jersey, docket number 3:14-cv-00937. (A copy of the First Amended Complaint in that litigation is attached hereto as "Exhibit B.")

19. Defendant New York City Department of Education has purchased Teachscape, Inc.'s

infringing online teacher training program from Teachscape, Inc.

20. Defendant continues to use Teachscape, Inc.'s online teacher training program to train and evaluate teachers.

21. Defendant's purchase and continued use of the infringing online teacher training program has caused damages to Educational Impact.

22. Educational Impact has brought this litigation to enjoin Defendant from continued use of the infringing product, to compel the destruction of the infringing product, and to recover damages.

COUNT I
COPYRIGHT INFRINGEMENT

23. Plaintiff incorporates the foregoing paragraphs as though the same were set forth at length herein.

24. Educational Impact is the exclusive licensee of the right to create a derivative work of the Charlotte Danielson Framework for Teaching in the form of an online or CD-ROM-based teacher training program.

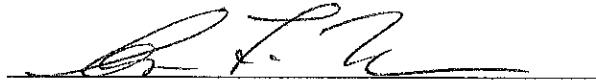
25. The protected work at issue in this case, the Framework for Teaching, is registered with the United States Copyright Office.

26. As set forth above, Defendant has purchased and continues to use an infringing online teacher training program based on the Charlotte Danielson Framework for Teaching.

27. Defendant's purchase and continued use of the infringing product has caused damages to Education Impact.

WHEREFORE, EI demands judgment against Defendant including an injunction barring Defendant from continued use of the infringing work and compelling the destruction of the infringing work, damages, costs of suit, attorney's fees, and such other relief as this Honorable Court deems just and proper.

Respectfully submitted,
ALAN L. FRANK LAW ASSOCIATES, P.C.

A handwritten signature in black ink, appearing to read 'A. L. Frank', is written over a horizontal line.

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